

REMARKS

The above-identified patent application has been amended and reconsideration and reexamination are requested in accordance with the provisions of 37 CFR 1.116(a).

The examiner issued a provision of double patenting rejection of claims 27, 29 and 31 as being substantial duplicates of claims 26, 28 and 30. Since the claims are not allowed, this is only a provisional rejection of the same type double patenting.

Applicant has amended claim 26 to make the claim dependent from claim 3, claim 27 dependent from claim 5 and claim 29 depend from claim 15. Applicant has also cancelled claim 31. In view of these amendments, it is submitted that claims 26 and 28 do not claim the same subject matter as claims 27 and 29 and, thus, a statutory double patenting objection has been overcome. Applicant having cancelled claim 31 also has overcome the statutory double patenting rejection of claims 30 and 31.

The examiner rejected claims 1-4 and 6-25 under 35 USC 102(e), as being anticipated by Ferstenberg.

Applicants claim 1 is patentably distinct over Ferstenberg. Claim 1 is directed to a method of determining an opening price for a product at an initial opening of trading in the trading system. Claim 1 recites posting an allocation message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening of a market in the event that an imbalance exists at the opening. This action of posting an allocation message is neither described nor suggested by the reference.

Ferstenberg is directed to an intermediated exchange where participants act through e-agents. The examiner bases the rejection of claim 1 in part on column 18 lines 30 through 54 of Ferstenberg. However, in this portion of the reference, as well as the remainder of the reference, Ferstenberg does not suggest posting an allocation message, as claimed. The cited text describes allocating amongst e-agents of the intermediary's initial offer. The teachings are directed to an actual allocation, not posting a message for an expected imbalance for execution at the initial opening of the market. Rather, the allocation taught by Ferstenberg is simply a pro rata sharing of the amount of a commodity that the e-agents collectively may wish to buy or sell.

Furthermore, this allocation is not directed to market makers as recited in applicants claim 1, but is directed to the e-agents themselves. Thus, there is no concept in Ferstenberg of a market maker or other similarly situated entity to which an allocation message of an expected imbalance of customer orders is directed to at the opening of the trading. Accordingly, claim 1 is patentably distinct over the reference.

Claims 2 through 10 add further patentably distinct features to applicants' claim 1 and claims 11-25 are patentable for the reasons of record.

The examiner also rejected claims 1 and 11 under 35 USC 102(e) as being anticipated by Rickard or Chan.

Applicants claims 1 and 11 are patentable over the references since the references neither describe nor suggest disseminating a message to market participants that indicates a current imbalance between buy and sell orders for the product and posting an allocation message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening of the market on the side of the imbalance in the event that the imbalance exists at the opening, as recited in claim 1 for example.

Chan does not describe such an arrangement. Chan merely describes posting of bid and ask prices. In fact at paragraph 1 on page 4 Chan describes that on the NYSE the specialist using knowledge of market and limit orders sets a price and offsets any imbalance from inventory, whereas, on the Nasdaq there is no such formal opening. Hence, claim 1 and 11 are distinguished over Chan.

Rickard also does not describe such an arrangement. Rickard assigns a residual balance of any imbalance of orders to market makers based on an algorithm that minimizes a cumulative measure of deviation between post-opening target and current positions. Nowhere in Rickard is expressed the teaching of posting an allocation message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening. Rickard merely assigns an allocation, as with Ferstenberg above, whereas claim 1 calls for posting a message that indicates an expected allocation. Thus, the present invention encourages additional interest to enter the market and allows adjustment of positions.

The examiner also rejected claims 2-5, 10, 12-15, 20-24 and 26-31 under 35 USC 103(a) as obvious over Rickard.

Claims 2 through 10 add further patentably distinct features to applicants' claim 1.

For example, claim 3 recites disseminating a message that indicates a current imbalance between buy and sell orders for the product. Rickard does not suggest disseminating a message that indicates the extent of an imbalance. The Examiner relies upon column 8, line 67 through column 9 line 14 to support Rickard's teaching of a message that indicates an extent of an imbalance. However, no message is described in this portion of the reference. This passage describes Rickard's algorithm to calculate implied volatilities.

Claim 5 has been amended to recite periodically disseminating a public message that indicates a current imbalance between buy and sell orders for the product to encourage contra-side interest to be drawn into the market to reduce volatility and bring the opening to an equilibrium price; and periodically determining an imbalance condition and posting the allocation message to market participants over regular periods of time that occur between the initial reception of orders and actual opening of the trading system to allow market participants to adjust their positions in the product.

Neither Chan nor Rickard suggest this arrangement. In Chan there is no suggestion of an allocation as discussed above, and in Rickard there is no suggestion of disseminating a public message that indicates the extent of an imbalance or posting an allocation message. Hence, the references cannot suggest periodically disseminating a message that indicates a current imbalance between ... to encourage contra-side interest ...; and periodically ... posting the allocation message to market participants over regular periods of time ... to allow market participants to adjust their positions in the product.

The public dissemination message provides aggregate information on the imbalance to a broad audience, and which would be expected to prompt the public or market makers to then come in to the market to offset the imbalance. The individual allocation posting to each market participant also may convey information along these lines, while informing the market maker of an imminent obligation during the opening that may spur action to help eliminate the imbalance.

Applicants' remaining claims further limit their base claims and are likewise patentable over the references for the reasons generally discussed above and/or for the reasons of record.

The examiner also rejected claims 6-9, 16-19 and 25 under 35 USC 103(a) as obvious over Rickard in view of Chan.

Applicants claim 6 is likewise patentably distinct over the references since the references neither describe nor suggest establishing a lock-in period that requires market makers to specify whether they accept the last anticipated share allocation received by them in order that their allocation will not be further reduced. The examiner admits that there is no teaching in the references of establishing a lock-in period. The examiner takes official notice of establishing lock-in periods. However, while the concept of a lock-in period may be old, that does not support or justify taking official notice of a lock-in period that enables market makers to specify acceptance of the last anticipated share allocation in order that an allocation will not be further reduced. The examiner has not established any foundation for such notice nor motivation to suggest the combination of the references with this so-called well known teaching.

Applicants claim 7 is further patentably distinct over the references since the references neither describe nor suggest applying received predefined relative indications to an imbalance that exists subsequent to establishing a lock-in period. The Examiner relies on Chan to teach predefined relative indications. However, the teachings of this reference do not describe the concept of a predefined relative indication, as recited by applicants. Applicant has amended claim 7 to recite, as set forth in the specification, a predefined relative indication corresponds to "a willingness to trade that resides in the system and remains dormant and unknown by other participants until executed." No such teaching of predefined relative indications is found in Chan. Thus, the reference does not describe or suggest applying predefined relative indications to an imbalance that exists subsequent to establishing a lock-in period. Thus, claim 7 is further patentably distinct over the reference.

Applicants' remaining claims 8, 9, 16-19 and 25 further limit their base claims, and are likewise patentable over the references for the reasons above and/or for the reasons of record.

Attached is a marked-up version of the changes being made by the current amendment. Enclosed is a Notice of Appeal.

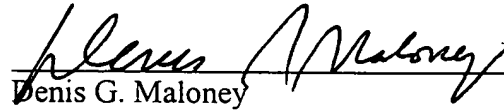
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Applicant asks that all claims be allowed. Enclosed is a \$110 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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Version with markings to show changes made

In the claims:

Claim 31 was cancelled.

Claims 5, 7, 26, 27 and 29 were amended as follows:

5. (Twice Amended) The method of claim 1 further comprising:

periodically disseminating a [the] public message that indicates a current imbalance between buy and sell orders for the product to encourage contra-side interest to be drawn into the market to reduce volatility and bring the opening to an equilibrium price; and

[wherein] periodically determining an imbalance condition[,] and posting [an] the allocation message to market participants[, and disseminating an imbalance message] over regular periods of time that occur between the initial reception of orders and actual opening of the trading system to allow market participants to adjust their positions in the product.

7. (Amended) The method of claim 6 further comprising:

applying received predefined relative indications, which express a willingness to trade and that reside in the system and remain dormant and unknown by other participants until executed, to an imbalance that exists subsequent to establishing the lock-in period.

26. (Amended) The method of claim [1] 3 wherein disseminating a message that indicates a current imbalance between buy and sell orders for the product is a publicly disseminated message.

27. (Amended) The method of claim [1] 5 wherein disseminating a message that indicates a current imbalance between buy and sell orders for the product is a publicly disseminated message that is disseminated to the general public [and market participants].

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29. (Amended) The computer program product of claim [13] 15 wherein instructions to disseminate a message that indicates a current imbalance between buy and sell orders for the product disseminate a message to the general public and market participants.